REMARKS/ARGUMENTS

All the claims, 1 to 9, have been rejected over a combination of Ziegler et al '246, Purdy '879, and Cubbler, Jr. et al '874.

Claims 2 through 9 include the limitations of independent claim 1 which sets forth the improvement over the prior art; namely "...pivoting the locking latch from the base in an arc".

Such an arrangement provides substantial benefits in making a connection, as disclosed in the specification, and as clearly demonstrated in the drawings, particularly in the graphs.

The primary reference, Ziegler et al '246 (cited in the present specification as part of the prior art), assigned to the assignee of the present application, clearly has a straight locking latch ("ear") 50, as seen in his drawings, and as set forth in his description.

The secondary reference to Purdy '879 does not show "...a connector that is stabbed through a slot in a main beam in a suspended ceiling grid to lock with an opposing identical connector already in the slot,..." as set forth in the present claims. Purdy's connectors are not "mating" as alleged in the Office Action, but each connector on a cross member only latches with the main beam, and has no connector to connector ("handshake") connection, as claimed by applicant. No one would look to Purdy '879 to combine with Ziegler et al '246.

Additionally, Purdy '879 does not show a connector in the form of an arc. As seen in his Figure 4, which is an enlarged view, his "engaging flaps" 48 are straight, and not in any arc

form. His Figure 7 shows the flaps 48 in miniature form, and it is these flaps which are enlarged in his Figure 4, and are shown in Figure 4 being straight.

There is nothing to suggest a combination of Ziegler '246 and Purdy '879, but even if combined the present invention would not result.

Cubbler, Jr., '874 does not have a connector with a locking latch that is stabbed through a slot in a main beam as required by the claims in the present application. Cubbler, Jr. '874, as shown in his Figure 7, has no locking latch, but simply has a hook-on through the slot to the main beam.

The Examiner's reference to Figure 5 in Cubbler, Jr.'874 is to guide loops and not locking latches.

Again, no one would look to combine Ziegler et al and Cubbler, but even if combined the present invention as now claimed would not result.

Applicant respectfully draws the Examiner's attention to the Patent and Trademark Office Board of Appeal and Interference decision in Appeal No. 93-4004, dated June 29, 1994. A copy is attached as Appendix "A". This decision relates to a patent in the same art as the present application. It is believed that the law cited in the Board decision, which supports the argument of the present applicant as set forth above, should be controlling in the present situation.

Applicant believes the invention, as now claimed, is unobvious over the prior art.

Applicant believes the application is now in condition for allowance, and respectfully requests such allowance.

24 March 2005

Respectfully submitted,

SIGNATURE OF PRACTITIONER

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Amendments to the Drawings

None.

Paper No. 39

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONN, INC.[1]

Appeal No. 93-4004
Reexamination 90/002,225[2]

HEARD:
June 3, 1994

Before STONER, LYDDANE, and MEISTER, *Administrative Patent Judges.*

STONER, *Administrative Patent Judge.*

DECISION ON APPEAL

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[1] Although the request for reexamination was filed in the name of USG Interiors, Inc. as the present owner of the patent under reexamination by virtue of assignment and merger, nevertheless, as indicated in Paper No. 3, the patent owner of record remains Donn, Inc.

[2] Request filed December 11, 1990, for the Reexamination of Patent No. 4,779,394, issued to Richard Shirey, Gerald L. Koski, Jonathan P. Teli and David F. Mieyal on October 25, 1988.

The patent owner appeals from the examiner's final rejection of claims 2, 3 and 6 through 26, in the final Office action mailed September 15, 1992. As the patent owner has pointed out at page 2 of the brief filed July 9, 1993,[3] amendments after final rejection filed on December 23, 1992 and January 25, 1993, have been approved for entry.[4] Claims 1, 4 and 5 have been canceled by the patent owner. We *reverse*.

The claimed invention relates to a suspension ceiling grid system. Like the examiner, we consider the summary contained in the brief (pages 2 through 7) correct and direct attention thereto. Claims 11 and 19 are illustrative of the subject matter on appeal and read as follows:

11. A suspension ceiling grid system comprising elongated grid runners interconnected at intersections including a through-runner and two opposed runner ends connected together on opposite sides of said through-runner, said runners including a web, an elongated vertically extending opening in the web of said through-runner having an upper end extremity and a lower end extremity, said through-runner web providing two remote sides, one of said two opposed runner ends being associated with one of said two remote sides, the other of said two opposed runner ends being associated with the other of said two remote sides.

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[3] All references to the brief in this decision are directed to the substitute brief filed July 9, 1993. The briefs filed February 9, 1993 and May 12, 1993, were ruled defective by the examiner.

[4] We note that the former amendment has not yet been clerically entered, despite bearing the examiner's approval thereon.

generally planar end connectors on the ends of said opposed runners projecting into said opening [form] from opposite sides thereof, said connectors providing first lock means each operable to project through said opening and move lengthwise of said opening between a release position and a locked position in which said first lock means [engages the remote side of said web] provides a lateral projection extending beyond one end extremity of said opening along the associated remote side of said through-runner web for engagement therewith, each runner providing a flange along one edge of said web, said flange of each of said opposed runner ends engaging an adjacent side of said flange of said through-runner, said flange of said through-runner normally maintaining said lateral projection beyond said one end extremity of said opening along the associated remote side of said through-runner web, said flange of said through-runner being temporarily deflectable to permit passage of said projection through said through-runner opening, said connectors also providing connector-to-connector locking means directly interconnecting said connectors in a direction lengthwise of said opening and preventing relative longitudinal movement of said opposed runners in a direction away from each other.[5]

19. Elongated runners for suspension ceiling grid systems adapted to be interconnected at intersections including a through-runner and opposed runner ends connected to said through-runner on opposite sides thereof comprising through-runners providing a web having an elongated vertically extending opening therethrough having an upper end extremity and a lower end extremity, said web of said through-runner having two remote sides, one of said opposed runner ends being associated with one of said two remote sides, the other of said opposed runner ends being associated with the other of said two remote sides, opposed runners providing generally planar connectors at their ends adapted to extend through said opening, said connectors providing first lock means including [a projection along one edge thereof] an upper lateral projection along an upper edge thereof adapted to be positioned in alignment with the associated remote side of said through-runner web beyond [one] said upper end extremity of said opening, said first lock means also including a lower lateral projection along the lower edge of said connectors adapted to be positioned in alignment with the associated remote

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[5] Consistent with the specification, we understand the language of claim 2 regarding "said first-end-end-lock" to be a reference back to the "first lock means" recited in claim 11.

side of said through-runner web beyond the lower end extremity of said opening, said connectors also providing second lock means adapted to interconnect two connectors extending through said opening on both sides of said opening by relative movement between said connectors lengthwise of said opening.[6]

The references relied upon by the examiner are:

Brown et al. (Brown)	3,501,185	Mar. 17, 1970
Sauer	4,317,641	Mar. 2, 1982

Claims 2, 6 through 23, 25 and 26 stand rejected under 35 USC 103 as unpatentable over Brown, while claim 24 stands rejected under 35 USC 103 as unpatentable over Brown in view of Sauer. Rather than reiterate the examiner's statements of these rejections, we direct attention to pages 2 through 4 of the answer mailed August 11, 1993.

Having carefully considered the respective positions expressed in the examiner's answer and supplemental answer (mailed December 16, 1993), and in the patent owner's brief and reply brief, filed September 13, 1993, it is our determination that the examiner's rejections of these claims must be reversed. We find ourselves in agreement with the position expressed by the

[6] Consistent with the specification, we understand the recitation in claim 6 of "said connector-to-connector lock" to be a reference back to the same structure termed a "second lock means adapted to interconnect two connectors" recited in claim 19.

patent owner that the suspension ceiling grid system of Brown is not one in which the flange of the through-runner is temporarily deflectable to permit passage of a projection on the connector through the through-runner opening as required by claim 11. Likewise, we see nothing in the teachings of Brown which would have suggested the oppositely extending lateral projections of claims 19 and 26. Nor is there anything in the teachings of Sauer, relied upon only in connection with claim 24, which would have made up for the deficiency of Brown.

The examiner's comments notwithstanding, we see nothing in Brown which remotely suggests any need for a temporary deflection of the flange of the through-runner during installation of the cross-runners. When the embodiment illustrated in Figures 8 through 13 is installed, a cross-runner is necessarily pivoted in a direction bringing the flange of the cross-runner from a position located remote from the flange of the through-runner down to a position in contact therewith, as is evident from the installed position illustrated in Figure 13. That is, as viewed in Figure 13, the cross-runner (at right) pivots clockwise into the full line position shown. There is no need for deflection of the flange of the through-runner. A similar analysis applies to the embodiment shown in Figures 1 through 7 of Brown. The end of the cross-runner illustrated in Figure 5 is notched to produce a

shoulder, as at 33, which stops short of the flange 16, providing clearance which permits installation of the cross-runner without any deflection of the flange of the through-runner. It follows that we do not share the examiner's view that, "temporary deflection may not be discernable in the experts's [sic] eyes, however, this deflection is an inherent feature of Brown's ceiling grid structure" (answer, page 5). Indeed, the Mieyal affidavit as to the manner in which the connector of Brown's Figure 13 embodiment engages with the through-runner is consistent with our reading of the Brown disclosure.

The examiner is of the view that because the embodiment of Figures 1 through 7 provides a projection on the bottom, but not on the top, of the connector and because the embodiment of Figures 8 through 14 provides a projection on the top, but not on the bottom of that connector, it would have been obvious to one having ordinary skill in the art to provide the runner as shown in Figure 13 with a lower projection as taught for the Figure 1 embodiment. We see no basis for such a conclusion. Our court of review has repeatedly cautioned against applying hindsight by using the applicant's disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art. See, e.g., *Grain Processing corporation v. American Maize-Products Co.*, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir.

1988). That court has also cautioned against focusing on the obviousness of the differences between the claimed invention and the prior art rather than the obviousness of the claimed invention as a whole as §103 requires. *See, e.g., Hybritech, Inc. v. Montoclonal Antibodies, Inc.*, 802 F.2d 1367, 1383, 231 USPQ 81, 93 (Fed. Cir. 1986), *cert. denied*, 480 US 947 (1987). We think that in the present instance, it is only through the use of impermissible hindsight that one would have sought to combine the features of the two disparate embodiments of Brown to produce a connector having the requisite physical characteristics. That being the case, the examiner's rejection must be reversed.

REVERSED

BRUCE H. STONER, JR.
Administrative Patent Judge

WILLIAM E. LYDDANE
Administrative Patent Judge

JAMES M. MEISTER
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES